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EXAMINER
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 23

Application Number: 09/168,644
Filing Date: October 08, 1998
Appellant(s): CONOVER, MARK D.

Donald E. Schreiber
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 22, 2003.

(1)   *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2)   ***Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3)   ***Status of Claims***

The statement of the status of the claims contained in the brief is correct.

(4)   ***Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is substantially correct.

At pages 3 and 4, respectively of the Brief filed September 22, 2003, the appellant indicates that Paper No. 9 was mailed October 19, 2001. Paper No. 9 was however mailed October 18, 2001.

At page 4 of the Brief filed September 22, 2003, the appellant indicates that on February 2, 2002, an Examiner's Action was mailed. The Examiner's Action was however mailed on February 12, 2002.

At page 5 of the Brief filed September 22, 2003, the appellant indicates that the response received on April 18, 2001 also presented for the first time new dependent claims 6 and 7. The response was however received on April 10, 2001 instead.

At page 5 of the Brief filed September 22, 2003, the appellant indicates that dependent claim 4 was last amended in a response to the February 2, 2002 Examiner's Action. The Examiner's Action was however mailed February 12, 2002.

(5)   *Summary of Invention*

The summary of invention contained in the brief is correct.

(6)   *Issues*

The appellant's statement of the issues in the brief is correct.

(7)   *Grouping of Claims*

Appellant's brief includes a statement that claims 1-7 do not stand or fall together and

provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8)   *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9)   *Prior Art of Record*

5,404,446	BOWATER et al	4-1995
5,838,678	DAVIS et al	11-1998
6,310,919	FLORENCIO	10-2001

(10)   *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

1.   Claims 2 and 3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite

for failing to particularly point out and distinctly claim the subject matter which applicant

regards as the invention.

It is emphasized again that the particular claim to the "MPEG-1" and "MPEG-2"

recommendations as shown in claims 2 and 3, respectively, are indefinite because there are many

versions of the MPEG-1 and MPEG-2 recommendations and the recommends are continuously

updated. To make it simpler for the applicant, the applicant could either provide in the remarks

section of a response to this Office action the respective dates for the MPEG-1 and MPEG-2

standards or provide a copy of the MPEG-1 and MPEG-2 recommendations in order to overcome

the rejection. It is again that the recommendations are constantly changing, even up to the filing

date of the application. Basically, the time frame between when the invention was reduced to

practice (i.e., date of conception) till the time the application is filed, for example, there could be

various versions of the recommendations. And unless the versions and dates of the

recommendations are provided, the metes and bounds of the claimed limitations are not clearly

set forth, and thus renders the claims indefinite.

2.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or
> described as set forth in section 102 of this title, if the differences between the subject
> matter sought to be patented and the prior art are such that the subject matter as a whole
> would have been obvious at the time the invention was made to a person having ordinary
> skill in the art to which said subject matter pertains. Patentability shall not be negatived
> by the manner in which the invention was made.

3.   Claims 1-3 and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Bowater et al of record (5,404,446) in view of Davis et al of record (5,838,678).

Bowater et al discloses a dual buffer video display system for the display of

asynchronous irregular frame rate video data as shown in Figures 1 and 2, and substantially the

same method for producing a compressed video bitstream that includes compressed video data

for a plurality of frames that specifies a single still image (see Figures 1 and 2, and column 3,

lines 19-34, column 4, lines 42-68) as claimed in claim 1, comprising substantially the same

fetching the data for the still image (see column 3, lines 19-34, column 4, lines 42-68); encoding

(see column 4, lines 42-68) the data for the single still image data; storing (i.e., within 4 of

Figure 1) the encoded frame data; assembling the compressed video bitstream by appropriately

combining data for at least a single copy of the stored frame (i.e., from 4 of Figure 1, see column

3, lines 19-34, column 4, lines 42-68), at least one null frame (see column 2, lines 48-62, column

4, lines 11-41, column 6, line 59 to column 7); and whereby decoding of the compressed video

bitstream produces frames of video which produce images that do not appear to pulse visually

(i.e., the AVK and circular buffer are used to compensate for the variable arrival rate of the video

frames, thereby eliminating viewing distortion and providing images that do not appear to pulse

visually, see column 3, line 19 to column 4, line 41).

Bowater does not particularly disclose, though, the followings:

(a) encoding the data for the single still image into data for an intra frame, storing the

encoded I frame data, and wherein the assembling the compressed video bitstream combines at

least a single copy of the stored I frame as claimed in claim 1;

(b) wherein null frames assembled into the compressed video bitstream also include

bitstream stuffing whereby the compressed video bitstream is transmittable at a pre-established

bitrate as claimed in claim 5;

(c) the various headers are required for decodability of the compressed video bitstream,

the various headers assembled into the compressed video bitstream include a sequence header

beginning the compressed video bitstream, at a beginning of group of pictures, a group start

code, for each encoded frame, a picture start code, and a sequence end code ending the

compressed video bitstream as claimed in claims 1, 2 and 6; and

(d) the various headers assembled into the compressed video bitstream include a

sequence header beginning the compressed video bitstream; for each encoded frame a picture

header, and a picture coding extension; and a sequence end code ending the compressed video

bitstream as claimed in claims 3 and 7.

Regarding (a), it is noted that Bowater et al does teach the particular spatial and temporal

compression of video signals (see column 4, lines 42-68), and obviously making reference to the

well known MPEG video compressions which include the processing of I, P, and B frames. In

any event, Davis et al discloses a method and device for preprocessing streams of encoded data

to facilitate decoding streams back to back as shown in Figures 2, 3A, 3B, 5, and 6, and teaches

the conventional MPEG video-compression processings involving I, P, and B frames (see figure

16). Therefore, it would have been obvious to one of ordinary skill in the art, having the

Bowater et al and Davis et al references in front of him/her and the general knowledge of intra

frame processings within the MPEG video compression standard, would have had no difficulty

in providing the intra frame processings as taught by Davis et al within the encoder and decoder

of Bowater et al thereby providing the encoding of the data for the single still image into data for

an intra frame, storing the encoded I frame data, and wherein the assembling the compressed

video bitstream combines at least a single copy of the stored I frame if such intra frame

processing were not already within the encoding/decoding of Bowater et al for the same well

known purposes as claimed.

Regarding (b) to (d), Davis et al teaches the particular use of headers for decodability of

compressed video bitstreams (see column 4, lines 48-62) and the conventional assembling of the

compressed video bitstream by appropriately combining data for headers such as sequence

header, group start code, picture start code, sequence end code, picture header, and picture

coding extension (see column 3, line 41 to column 4, line 16), as well as bitstream stuffings

whereby the compressed video bitstream may be transmitted at a pre-established bitrate (see

Figure 2). Therefore, it would have been obvious to one of ordinary skill in the art, having the

Bowater et al and Davis et al references in front of him/her, would have had no difficulty in

providing the required header data for the MPEG encoding/decoding as well as including the

bitstream stuffings in the compressed video bitstream as shown in Davis et al for the compressed

video data within encoder and decoder of Bowater for the same well known video bit processing

and standard compliance purposes as claimed.

4.   Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bowater et al and

Davis et al as applied to claims 1-3 and 5-7 in the above paragraph (3), and further in view of

Florencio of record (6,310,919).

        The combination of Bowater et al and Davis et al discloses substantially the same method

for producing a compressed video bitstream as above, but does not particularly disclose wherein

parameters used in encoding the data for the still image produce an amount of data for the I

frame that approaches, but remains less than, storage capacity of a buffer memory included in a

decoder that stores the compressed video bitstream as claimed in claim 4. The particular storage

of compressed video bitstreams within a decoder is however old and well recognized in the art,

as exemplified by Florencio (see 111 of Figure 1 and column 5, lines 1-12). Therefore, it would

have been obvious to one of ordinary skill in the art, having the Bowater et al, Davis et al, and

Florencio references in front of him/her and the general knowledge of storage buffers within

video image decoders, would have had no difficulty in providing the buffer memory within the

decoder of Florencio for storage of and decoding of the compressed video bitstream of Bowater

et al for the same well known buffer of data purposes as claimed.

(11)   Response to Argument

        Regarding the appellant's remarks/arguments at page 10 of the Brief filed September 22,

2003 concerning in general the withdrawal of the final rejection dated June 8, 2001 and

reopening prosecution in view of the first Brief filed December 7, 2001, the Examiner wants to

firstly apologize for any inconvenience that this may have caused for the appellant. Secondly, the Examiner wants to point out that the combination of Bowater et al and Davis et al as the basis for rejecting claims 1-3 and 5-7 in the final rejection dated March 18, 2003 presents a different grounds of rejection from the combination of Gormish et al, Bowater et al, and Davis et al in the final rejection dated June 8, 2001 that was withdrawn by the Examiner. Even though two of the references (i.e., Bowater et al and Davis et al) are derived from the withdrawn final rejection, these two references are deemed proper in rejecting claims 1-3 and 5-7.

Regarding the appellant's arguments at pages 10-14 of the Brief filed September 22, 2003 concerning in general that "... The invention disclosed in the Bowater, et al patent necessarily addresses a problem associated with displaying "motion" video rather than displaying video of still images ... Despite diligently searching the Bowater et al patent, Applicant is unable to find there any disclosure or even a suggestion that the disclosed buffering technique might be used with anything other than motion video. That is, Applicant is unable to find any disclosure or suggestion in the Bowater et al patent that it might be useful in connection with still images, particularly for preventing still images from pulsing visually ...", the Examiner does not particularly understand such arguments. As shown in the preamble of claim 1, it recites a method of producing a compressed video bitstream, and further in claims 2 and 3 reciting the compressed video bitstream being in compliance with the MPEG-1 and MPEG-2 standards. It is clear from the claimed limitations that the present invention deals with motion video. Further, the appellant's attention is directed to column 3, line 19 to column 4, line 41 of Bowater et al for teachings of the use of the AVK and circular buffer for compensating of variable arrival rate of the video frames, thereby eliminating viewing distortion and providing images that do not appear to pulse visually as claimed. The appellant's attention is also directed to column 4, lines 50-51 of Bowater et al for teachings of still frame spatial compression, and as such it is submitted that

Bowater et al is also concerned with still images, the display of still images, and the prevention of still images from pulsing visually.

Regarding the appellant's arguments at pages 14-17 of the Brief filed September 22, 2003 concerning in general that "... Despite diligent searching of the Davis et al patent, Appellant is unable to find any mention that the disclosed preprocessing method may be used advantageously in encoding still images in accordance with the MPEG I or MPEG II standards, or using null frames in any compressed video encoding ... Appellant is also unable to find any disclosure or suggestion that the disclosed preprocessing technique prevents still images from pulsing visually ...", the Examiner respectfully disagrees. It is submitted that the particular spatial and temporal compression of video signals as taught at column 4, lines 42-68 of Bowater et al obviously is making reference to the well known MPEG video compressions which include the processing of the I, P, and B frames. The lack of such disclosure within Bowater et al is however shown in Davis et al (see Figure 16), and as such it is considered obvious that the still images within Bowater et al may be encoded in accordance with the MPEG I and MPEG II standard as taught by Davis et al. In addition, it is submitted that Bowater et al does show the particular use of null frames in the compressed video (see column 4, lines 11-41). And regarding the particular prevention of still images from pulsing visually, such arguments have been addressed in the above paragraph.

Regarding the appellant's arguments at pages 17-27 of the Brief filed September 22, 2003 concerning in general that "... The preceding text excerpted form the Bowater et al patent irrefutably establishes that the "video signal" produced by a video camera 16 is not the "data that specifies a single still image as recited in the preamble of independent claim 1 ... Appellant is unable to find anywhere in the excerpts quoted above from the Bowater et al patent "fetching the data for the still image" for the purpose of producing a "compressed video bitstream" ...", the Examiner does not particularly understand such arguments. It is well recognized in the art that a

video signal is made up of a plurality of still image frames. And since Bowater et al teaches the

particular video compressions involving spatial compression of still image frames and temporal

compression of relative frames (see column 3, lines 19-34, column 4, lines 42-68 of Bowater et

al), it is submitted that Bowater et al provides the same method for producing a compressed

video bitstream that includes compressed video data for a plurality of frames from data that

specifies a single still image as claimed. And in order to provide the spatial compression within

Bowater et al, the still images as identified at column 4, lines 42-68 of Bowater et al are fetched

for the purpose of producing the compressed video data.

Regarding the appellant's arguments at pages 27-31 of the Brief filed September 22, 2003

concerning in general that " ... Appellant is unable to find ...from the Bowater et al patent which

discloses or suggest that data for a still image, as that terminology is used in the pending patent

application, is being encoded into an I frame ... Appellant is baffled how, without the assistance

provided by the text of pending independent claim 1, an unlabeled box in drawing Fig. 1 of the

Bowater et al patent that is identified by only the word "computer" in that reference's text can

disclose "storing the encoded I frame data" ...", the Examiner wants to point out again that even

without specific disclosure, the particular spatial and temporal compression of video signals

taught by Bowater et al is obviously making reference to the well known MPEG video

compression which includes the processing and encoding of I, P, and B frames, as shown in

Davis et al (see figure 16 of Davis et al). With this in mind, it is therefore inherent if not obvious

that the still image spatial compression within Bowater et al is the same as I frame video

compression as provided by Davis et al. As such, the combination of Bowater and Davis et al

clearly teaches the particular encoding the data for the single still image into data for an I frame

as claimed. Further, since the temporal compression of Bowater et al involves the encoding of

relative frames, i.e. P or B frames, in terms of its difference from the previous frame (see column

3, lines 19-34, column 4, lines 42-68 of Bowater et al) as performed within the computer 4 of

Bowater et al, it is considered inherent that the previous frame, i.e. I or P frame, must be stored

within the computer 4 of Bowater et al and retrieved in order produce the relative frames. It is

noted that Bowater also teaches the buffering of frames within the computers (see column 3, line

46 to column 4, line 41). The Examiner wants to stress that: One of ordinary skill in the art is

presumed to possess a certain amount of background knowledge independent of the references.

In re Sovish, 769 F.2d 738, 226 USPQ 771 (Fed. Cir. 1985); In re Jacoby, 309 F.2d 513, 135

USPQ 317 (C.C.P.A. 1962). The conclusion of obviousness may be made from common

knowledge and common sense of a person of ordinary skill in the art without any specific hint or

suggestion in a particular reference. In re Bozek, 416 F.2d 1385, 163 USPQ 545 (C.C.P.A.

1969). In view of the above, it is submitted that the encoded I frame data as provided by Davis

et al is stored in the computer 4 of Bowater et al for buffering and for producing the desired

relative frames.

Regarding the appellant's arguments at pages 31-36 of the Brief filed September 22, 2003

concerning in general that "... Appellant is unable to find ... from the Bowater et al patent which

discloses or even suggests "assembling the compressed video bitstream by appropriately

combining data for ... at least a single copy of the stored frame ... "assembling the compressed

video bitstream by appropriately combining data for ... at least a single copy of [an] I frame and

at least one null frame ...", the Examiner respectfully disagrees. The MPEG video compression

as taught by Davis et al involves the combining of I, B, P frames (see Figure 16 of Davis et al),

and since Bowater et al teaches the desire to add null frames to the compressed video (see

column 4, lines 11-68), it is submitted that the combination of Davis et al and Bowater et al

provides substantially the same if not the same assembling the compressed video bitstream by

appropriately combing data for at least a single copy of the stored I frame (i.e., as provided by

computer 4 of Bowater et al for the I frame of Davis et al) and at least one null frame, as

claimed.

Regarding the appellant's arguments at pages 37-40 of the Brief filed September 22, 2003 concerning in general that " ... the Examiner's Action data March 18, 2003, fails to identify specific word(s), phrase(s) or sentence(s) citing column(s) and line number(s) in the Bowater et al patent which disclose or even suggest the whereby clause of "decoding of the compressed video bitstream produces frame of video which produce images that do not appear to pulse visually" ...", the Examiner wants to point out again that: One of ordinary skill in the art is presumed to possess a certain amount of background knowledge independent of the references. In re Sovish, 769 F.2d 738, 226 USPQ 771 (Fed. Cir. 1985); In re Jacoby, 309 F.2d 513, 135 USPQ 317 (C.C.P.A. 1962). The conclusion of obviousness may be made from common knowledge and common sense of a person of ordinary skill in the art without any specific hint or suggestion in a particular reference. In re Bozek, 416 F.2d 1385, 163 USPQ 545 (C.C.P.A. 1969). The appellant's attention is directed again to column 3, line 19 to column 4, line 41 of Bowater et al for teachings of the use of the AVK and circular buffer for compensating of variable arrival rate of the video frames at the decoder, thereby eliminating viewing distortion and providing images that do not appear to pulse visually. As such, it is submitted that Bowater et al provides substantially the same if not the same whereby decoding of the compressed video bitstream produces frame of video which produce images that do not appear to pulse visually, as claimed.

Regarding the appellant's arguments at page 41 of the Brief filed September 22, 2003 concerning in general that " ...the admission fails to mention the null frame expressly required by the text of this method in independent claim 1 ...", the Examiner wants to point out that such arguments have been addressed in the above.

Regarding the appellant's arguments at pages 42-43 of the Brief filed September 22, 2003 concerning the cited seven Figures excerpted from the text of Davis et al, and in particular that the Examiner's statement fails to justify rejecting independent claim 1 because it does not

identify any motivation or suggestion for combining the disclosures of Bowater et al and Davis et al patents, the Examiner respectfully disagrees. As explained in the above, Bowater et al and Davis et al obviates the claimed features of "encoding the data for the single still image into data for an intra frame, storing the encoding I frame data, and wherein the assembling the compressed video bitstream combines at least a single copy of the stored I frame, as claimed.

Regarding the appellant's arguments at page 43 of the Brief filed September 22, 2003 concerning in general the Examiner's motivational statement and the Appellant demanding proof of knowledge that claim 1 was "well known" when the pending patent application was filed now almost 5 years ago, the Examiner does not particularly understand such arguments. The proof is simply shown by the combination of Bowater et al and Davis et al, as explained by Examiner in the rejection above.

Regarding the appellant's arguments at pages 44-48 of the Brief filed September 22, 2003 concerning in general that "... The modification of the disclosure of the Bowater et al patent required by Examiner's Action's rejection of claims for obviousness under 35 U.S.C. 103(a) illustrated in Exhibit H renders the network 2 of computers 4, 6, 8 disclosed in that reference inoperable for the Bowater et al patent's intended purpose. For example, the asynchronous communication channel 15 depicted in Exhibit H's modified FIG. 1 no longer connects the first source computer 4 to the destination computer 6 ... Because frames of video data no longer arrive irregularly at the destination computer 6, there no longer exists any need for the invention disclosed in the Bowater et al patent which seeks to accommodate frames of video data arriving irregularly at the destination computer 6 ...", the Examiner does not particularly understand such arguments. The rejection in view of the combination of Bowater et al and Davis et al does not involve the modification of Figure 1 of Bowater et al as presented by the appellant in Exhibit H. Specifically, the intra frame processings, header data required for the MPEG encoding/decoding, and including bitstream stuffings in the compressed video bitstream as all taught by Davis et al

that are provided within the encoder and decoder of Bowater et al do not require the modification

to figure 1 of Bowater as stated by the appellant. It is still submitted that the combination of

Bowater et al and Davis et al is proper and operable for reasons above.

Regarding the appellant's arguments at pages 48-51 of the Brief filed September 22, 2003

concerning in general that "... Appellant is unable to find in that text quoted from the Florencio

patent, which includes all of the text identified in the Examiner's Action dated March 18, 2003,

any disclosure that the "variable length encoded bitstream, e.g., a high definition television

signal (HDTV) or standard definition television signal (SDTV) output from a transport

demultiplexer/decoder circuit" received by the "input buffer memory module 111" of the

"MPEG-like decoder 100" for a single I frame contains an amount of data that approaches, but

remains less than, storage capacity of the "input buffer memory 11" as alleged in the Examiner's

Action dated March 18, 2003 ... Appellant is actually unable to find anywhere in the Florencio

patent any disclosure of the amount of "variable length encoded bitstream" which the "input

buffer memory module 111" may receive for a single encoded frame of video, or how "input

buffer memory module 111" relates to the size of the "input buffer memory 111" ... Appellant

cannot find anywhere in the disclosure of the Florencio patent anything about "parameters

employed in encoding the data for [an] image" ...", the Examiner wants to point out again that

since Florencio teaches an MPEG-like decoder as shown in Figure 1, the particular I, P, and B

frames are therefore being decoded within the decoder of Florencio. In particular, I frame data

are inputted into the buffer 111 of Florencio for further decodings. The particular limitation

"parameters used in encoding the data for the still image produce an amount of data for the I

frame that approaches, but remains less than, storage capacity of a buffer in a decoder" as

claimed is therefore considered met by the buffer 111 of Florencio which is definitely capable of

storing an amount of data for the I frame that is less than a storage capacity of a buffer.

Therefore, the critical issue at hand is not the amount of variable length encoded bitstream data

which the input buffer memory module 111 may receive for a single encoded frame of video or how the amount of variable length encoded bitstream is received by the input buffer memory module 11 relates to the size of the input buffer memory module 11, but whether any amount of data for the I frame is being provided to the decoder buffer. And as long as some amount of data for an I frame is being processed within the decoder buffer, as shown in buffer 111 of Florencio, the claimed limitations are considered met. Further, since compressed video data (i.e., I, P, B frames) are being provided as input to the decoder as shown in Figure 1 of Florencio, the particular "parameters used in encoding the data for the still image" as claimed is considered met.

Regarding the appellant's arguments at pages 51-53 of the Brief filed September 22, 2003 concerning in general the rejection of claims 2 and 3 under 35 USC 112, second paragraph and that "... In re Metcalfe holds that insufficiency of disclosure rejections due to "Risk of the Future" are to be decided on a case-by-case basis using a rule of reason analysis ... In re Metcalfe observes that there always exist a possibility, however remote, that at some future date a material or an apparatus might no longer be available for practicing a patent invention, but that the existence of such a risk should not bar the issuance of a patent in every instance ... the use of metaphors and relative terminology, respectively MPEG-1 and MPEG-2 in claims 2 and 3 that Board of Appeals approved for computer related inventions in In Ex parte Logan, is reasonable for pending claims 2 and 3 because there exist little likelihood that ISO's and/or IEC's publications of the MPEG-1 and MPEG-2 specifications will become unavailable during the term of a patent issuing on the present application ...", the Examiner wants to point out again that the rejection of claims are not based on a "Risk of Future" that there is a possibility that at some future date a material or an apparatus might no longer be available for practicing a patent invention or that the specifications will somehow become unavailable during the term of a patent

issuing on the present application, but are based on the fact that there is a gap between the date of

conception and the filing date of the present application (see above paragraph (1) under section

(10) Grounds of Rejection). And unless the applicant indicates the date of conception by

providing the dates for the MPEG-1 and MPEG-2 references, the metes and bounds of the

claimed limitations have not been clearly set forth. The applicant is not entitled to anything

beyond the date of conception, and as such it is critical for the applicant to provide the dates for

the MPEG-1 and MPEG-2 standards.

Regarding the appellant's arguments at pages 54-57 of the Brief filed September 22,

2003, such arguments have been addressed in the above.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Richard Lee
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